

Message Text

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TO AMEMBASSY SANTIAGO IMMEDIATE

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EXDIS

E.O. 11652: GDS

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SUBJECT: PROTECTION OF HUMAN RIGHTS

REF: (A) GENEVA 5001, (B) STATE 185343

FOR AMBASSADOR DAVIS

1. IN SPITE OF SOME RECENT POSITIVE STEPS DEPARTMENT CONCERNED ABOUT ALLEGED GOC TREATMENT OF PERSONS, ESPECIALLY ALIENS, WHO HAVE BEEN DETAINED AND ARE ULTIMATELY TO BE TRIED AND/OR DEPORTED BY GOC. TO DATE THERE HAS BEEN CONSIDERABLE ADVERSE PRESS COMMENT; WE HAVE RECEIVED SEVERAL INQUIRIES FROM SENATORS, CONGRESSMEN AND PUBLIC AND ANTICIPATE QUESTIONING BEFORE FASCELL SUBCOMMITTEE AND CURRENT FRASER SUBCOMMITTEE HEARINGS ON HUMAN RIGHTS MATTERS. WE WOULD LIKE TO BE ABLE TO SAY THAT WE HAD EXPRESSED OUR CONCERN TO NEW GOC AT FIRST AVAILABLE OPPORTUNITY, AND THAT RESPONSE HAD INDICATED THEIR SENSITIVITY TO THESE PROBLEMS AND STRONG DESIRE TO AVOID ANY VIOLATIONS OF GOC'S LEGAL CONFIDENTIAL

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AND HUMANITARIAN OBLIGATIONS. MOREOVER, WE RECOGNIZE THAT AS A PRACTICAL MATTER GOC ADHERENCE TO HUMAN RIGHTS PRINCIPLES IN TREATMENT OF PRISONERS AND CONDUCT OF TRIALS WILL MAKE IT MUCH EASIER FOR A COOPERATIVE RELATIONSHIP

BETWEEN THE GOC AND USG TO RECEIVE THE SUPPORT FROM CONGRESS AND AMERICAN PUBLIC OPINION IT REQUIRES.

2. WE REALIZE, NEVERTHELESS, THAT GOC WILL BE EXTREMELY SENSITIVE TO ANY OFFICIAL USG DEMARCHE ON THIS SUBJECT. FOR THIS REASON, WE HAVE CONCLUDED THAT DEMARCHE SHOULD NOT TAKE PLACE UNTIL AFTER WE HAVE FORMALLY CONTINUED RELATIONS WITH NEW GOVERNMENT, THAT IT SHOULD BE RAISED IN CONTEXT OF OTHER MAJOR AREAS OF USG-GOC COMMON INTEREST, AND THAT IT SHOULD EMPHASIZE POSITIVE STEPS GOC HAS ALREADY TAKEN IN HUMAN RIGHTS MATTERS. CONSISTENT WITH THESE CAVEATS, AMBASSADOR SHOULD, UNLESS HE PERCEIVES OVER-RIDING OBJECTION, MAKE OR HAVE MADE DEMARCHE ON HUMAN RIGHTS ALONG LINES OUTLINED PARAS 3-5 BELOW AT EARLIEST APPROPRIATE OPPORTUNITY, DRAWING ON BACKGROUND INFORMATION PROVIDED PARAS 6-8 AT HIS DISCRETION.

3. THE UNITED STATES IS RELUCTANT TO RAISE QUESTIONS OF HUMAN RIGHTS WITH THE GOC BECAUSE IN SO MANY INSTANCES THEY ARE ESSENTIALLY MATTERS OF DOMESTIC JURISDICTION. WE UNDERSTAND FULLY THE SERIOUS PROBLEMS OF SECURITY WHICH THE GOC HAS FACED IN RECENT DAYS AND THAT SUBSTANTIAL STEPS HAD TO BE TAKEN IN ORDER TO RESTORE PUBLIC ORDER. WE VIEW THE POSITIVE STEPS WHICH THE GOC HAS ALREADY TAKEN IN HUMAN RIGHTS MATTERS AS EVIDENCE BOTH OF THE GOC'S BASICALLY HUMANITARIAN NATURE, CONSISTENT WITH LONG CHILEAN TRADITION, AND ITS REALIZATION THAT HUMAN RIGHTS PROBLEMS, IF NOT RESOLVED, COULD CAUSE SERIOUS DANGER TO GOC'S INTERNATIONAL REPUTATION. INsofar AS THE UNITED STATES IS CONCERNED, WE REALIZE THAT AN "ADVERSE PRESS" FOR THE GOC ON HUMAN RIGHTS MATTERS COULD INTERFERE WITH OUR OWN EFFORTS TO ASSIST THE GOC AND TO WORK CLOSELY WITH IT IN THE MONTHS AHEAD. IT IS IN THIS SPIRIT THAT OUR REMARKS SHOULD BE TAKEN.

4. WE, OURSELVES, AND, WE BELIEVE, INTERNATIONAL OPINION, CONFIDENTIAL

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HAVE BEEN FAVORABLY IMPRESSED BY A NUMBER OF VERY POSITIVE STEPS WHICH THE GOC HAS TAKEN IN RECENT DAYS TOWARD ASSUAGING THE PERHAPS UNJUSTIFIED FEARS OF MANY CONCERNING THE SITUATION IN CHILE. WE KNOW THAT THE GOC HAS ASSURED THE UN HIGH COMMISSIONER ON REFUGEES THAT IT IS NOT THEIR INTENTION TO DEPORT POLITICAL REFUGEES TO THE COUNTRIES FROM WHICH THEY FLED, AND THAT REFUGEES WHO ARE NOT ALLOWED TO REMAIN IN CHILE WILL BE ABLE TO CHOOSE THEIR DESTINATION. MISSIONS FROM THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES AND THE INTERNATIONAL COMMITTEE FOR THE RED CROSS WHICH HAVE COME TO CHILE WITH GOC APPROVAL TO ASSESS RELIEF NEEDS OF REFUGEES AND TO PROVIDE ASSISTANCE TO POLITICAL DETAINEES, RESPECTIVELY, SHOULD BE EFFECTIVE IN SHOWING WORLD

OPINION THAT THE GOC INTENDS TO RESPECT FULLY ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO THESE PERSONS.

REPORTED GOC INVITATION TO FOREIGN JOURNALISTS TO OBSERVE THE SITUATION, AND ASSURANCES THAT ACCUSED WILL BE ABLE TO RETAIN DEFENSE COUNSEL, ADD TO THIS IMPRESSION.

5. THE INTERNATIONAL COMMUNITY HAS CERTAIN BASIC EXPECTATIONS AS TO TREATMENT OF RESISTERS, DETAINEES, AND THOSE ACCUSED OF CRIMES, OF WHICH THE GOC HAS INDICATED ITS AWARENESS BY THESE ACTIONS IT HAS ALREADY TAKEN. RESISTERS WHO HAVE LAID DOWN THEIR ARMS, AND DETAINEES, ARE EXPECTED TO RECEIVE FAIR AND HUMANE TREATMENT PENDING RELEASE OR TRIAL, INCLUDING CONTACT WITH CONSULAR REPRESENTATIVES FOR THOSE WHO DESIRE SUCH COMMUNICATION. SUMMARY EXECUTIONS OR BEATINGS OBVIOUSLY WOULD VIOLATE INTERNATIONAL NORMS. THE TRIALS THEMSELVES SHOULD CAUSE FEW SERIOUS PROBLEMS IF THEY ARE PUBLIC, OPEN TO FOREIGN OBSERVERS, AND LIMITED TO PERSONS CHARGED WITH SPECIFIC COMMON CRIMES. GOC HAS AVAILABLE TO IT ABLE INTERNATIONAL LAWYERS WHO CAN ADVISE GOC WITH RESPECT TO APPLICABLE INTERNATIONAL NORMS AND EXPECTATIONS OF INTERNATIONAL COMMUNITY. IN SHORT, USG IS IMPRESSED WITH EARLY INDICATIONS OF GOC RESPECT FOR HUMAN RIGHTS AND HOPES GOC WILL CONTINUE TO EXHIBIT SAME RESPONSIVENESS AND FORTHRIGHT APPROACH.

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6. FYI: CHILE IS PARTY TO GENEVA CONVENTIONS ON THE LAW OF WAR, WHICH APPLY IN PART TO CIVIL STRIFE, THE CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS PROTOCOL, APPLICABLE TO REFUGEES AND CERTAIN POLITICAL ASYLEES, THE VIENNA CONVENTION ON CONSULAR RELATIONS WHICH PROVIDES A RIGHT OF CONSULAR ACCESS, AND THE UNIVERSAL DECLARATION ON HUMAN RIGHTS, AN AFFIRMATION WHICH LACKS THE BINDING FORCE OF LAW BUT NEVERTHELESS IS WIDELY ACCEPTED AS A CONSENSUS OF THE INTERNATIONAL COMMUNITY ON THE RIGHTS OF INDIVIDUALS. ARTICLE 3 OF EACH OF THE GENEVA CONVENTIONS PROVIDES THAT QUOTE: IN THE CASE OF ARMED CONFLICT NOT OF AN INTERNATIONAL CHARACTER OCCURRING IN THE TERRITORY OF ONE OF THE HIGH CONTRACTING PARTIES EACH PARTY TO THE CONFLICT SHALL BE BOUND (TO PROVIDE HUMANE TREATMENT, ON A NON-DISCRIMINATORY BASIS, TO) PERSONS TAKING NO ACTIVE PART IN THE HOSTILITIES, INCLUDING MEMBERS OF THE ARMED FORCES WHO HAVE LAID DOWN THEIR ARMS. END QUOTE. IN ADDITION, THIS PROVISION EXPRESSLY PROHIBITS A NUMBER OF ACTS, INCLUDING QUOTE: THE PASSING OF SENTENCES AND THE CARRYING OUT OF EXECUTIONS WITHOUT PREVIOUS JUDGMENT PRONOUNCED BY A REGULARLY CONSTITUTED COURT AFFORDING ALL THE JUDICIAL GUARANTEES WHICH ARE RECOGNIZED AS INDISPENSIBLE BY

CIVILIZED PEOPLES. END QUOTE.

7. THE CONVENTION ON REFUGEES DEFINES REFUGEES AS PERSONS WHO HAVE REMAINED OUTSIDE THE COUNTRY OF NATIONALITY DUE TO A "WELL-FOUNDED FEAR OF BEING PERSECUTED FOR REASONS OF . . . MEMBERSHIP OF A PARTICULAR SOCIAL GROUP OR POLITICAL OPINION." ARTICLES 32 AND 33 RESTRICT EXPULSION OF REFUGEES; ARTICLE 16 PROVIDES FOR ACCESS TO LOCAL COURTS. ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS PROVIDES SPECIFICALLY FOR AN INDIVIDUAL RIGHT OF ASYLUM, EXCEPT FOR NON-POLITICAL CRIMES. UNDER ARTICLE 11 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS PERSONS CHARGED WITH PENAL OFFENSES ARE AFFORDED A VARIETY OF DUE PROCESS GUARANTEES, INCLUDING THE RIGHT TO A PUBLIC TRIAL. ALTHOUGH THE DECLARATION DOES NOT ITSELF CREATE ANY LEGALLY ENFORCEABLE INTERNATIONAL OBLIGATIONS, IT IS PERHAPS THE MOST WIDELY RECOGNIZED STATEMENT OF THE CONFIDENTIAL

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MINIMUM STANDARDS OF JUSTICE A NATION IS EXPECTED TO PROVIDE. THE INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS ADOPTED BY THE UN GENERAL ASSEMBLY IN 1966 PROVIDES SIMILAR DUE PROCESS GUARANTEES AND, IN ADDITION, RESTRICTS EXPULSION OF ALIENS LAWFULLY PRESENT IN A COUNTRY AND MAKES EXPULSION SUBJECT TO LEGAL PROCESS (ARTICLE 13). (ARTICLE 4 PROVIDES AN ESCAPE CLAUSE IN TIMES OF PUBLIC EMERGENCY THREATENING THE LIFE OF A NATION.) THIS COVENANT HAS NOT YET ENTERED INTO FORCE BUT THE GOVERNMENT OF CHILE HAS ADHERED TO IT.

8. ARTICLE 36 OF CONSULAR CONVENTION AFFORDS CONSULAR OFFICERS RIGHT TO VISIT NATIONALS OF HIS STATE WHO ARE DETAINED LOCALLY, AND REQUIRES AUTHORITIES OF RECEIVING STATE TO NOTIFY CONSUL WHEN NATIONAL OF HIS STATE HAS BEEN

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